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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,260	02/09/2004	Pierre Grasset	14612	7149
293	7590	05/04/2005	EXAMINER	
Ralph A. Dowell of DOWELL & DOWELL P.C. 2111 Eisenhower Ave. Suite 406 Alexandria, VA 22314			MENDOZA, MICHAEL G	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/773,260

Applicant(s)

GRASSET, PIERRE

Examiner

Michael G. Mendoza

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/9/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
2. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 1 recites the broad recitation "nursery car article", and the claim also recites "a feeding bottle or comforter" which is the narrower statement of the range/limitation.

Claim Objections

3. Claim 5, 7, and 10 objected to because of the following informalities: the claim language "wherein it is question" is not clear. The Examiner recommends changing the

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claim language to "wherein article comprises a feeding bottle" or "wherein the article comprises a comforter". Appropriate correction is required.

4. Claims 6, 7, and 9 are objected to because of the following informalities: the Examiner recommends changing the phrases "this tip", "this bottle", and "this flange" to "the tip", "the bottle", and "the flange". Appropriate correction is required.

Claim Rejections - 35 USC § 102

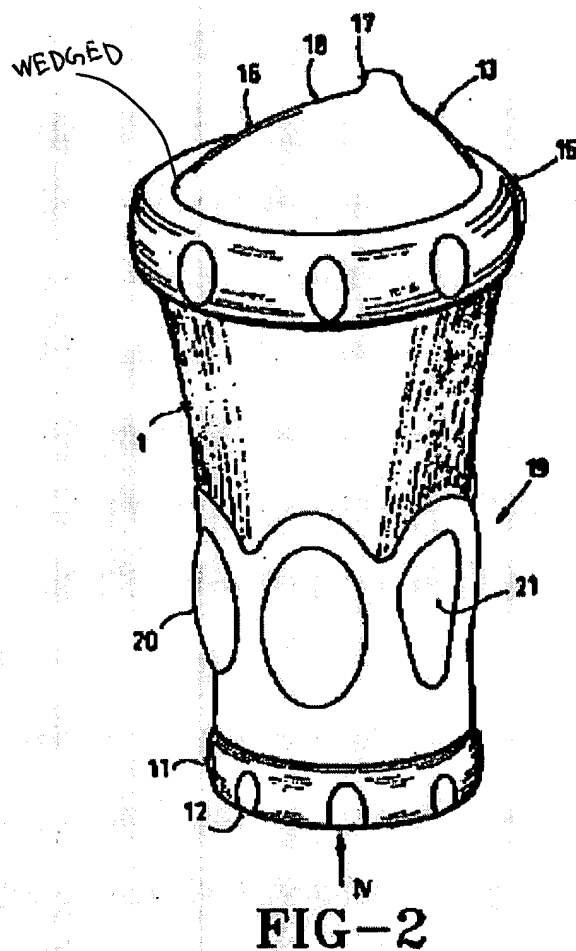
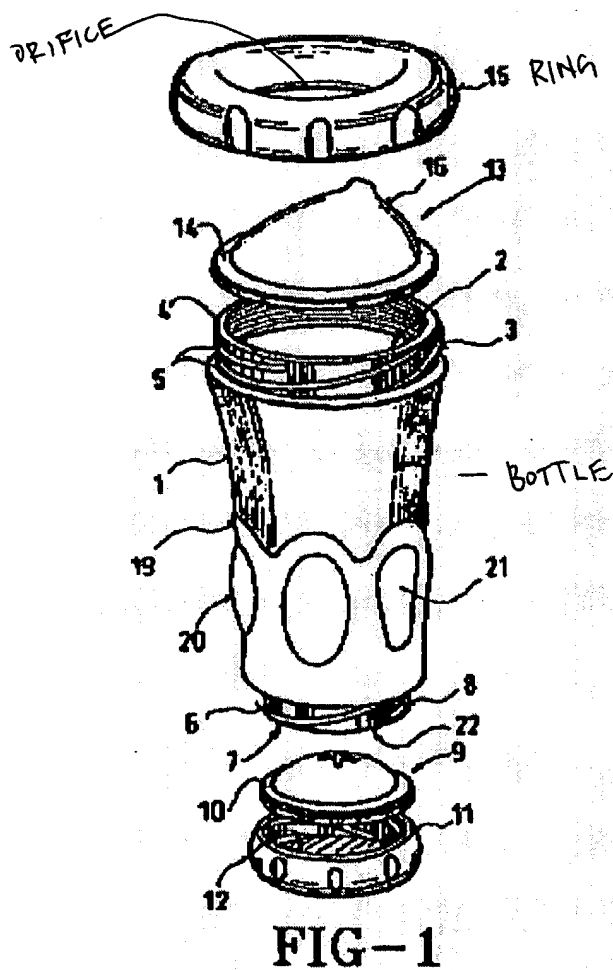
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, and 4-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Kerns et al. 6871751.

6. Kerns et al. teaches a nursery care article, in particular a feeding bottle or comforter, comprising a body 13, a tip for suction 18, a member on which the infant's lips abut 16; wherein the hardness of the member on which the lips abut is clearly greater than the hardness of the tip (col. 13, lines 35-39); wherein the tip and the member on which the lips abut belong to a teat of the bottle; wherein the member on which the lips abut and the tip are mutually independent, at least in translation along a principal axis of the tip; a ring 15 adapted to be connected on the body, the member on which the lips abut being integral with the ring, while the tip belongs to a teat of the bottle, which is adapted to be removably fixed, by wedging, between opposite surfaces of the ring and the body (fig. 1); wherein the member on which the lips abut defines, opposite the ring, and orifice for the passage of the tip (figs. 1 & 2); wherein the teat

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comprise the tip, a flange 14 for wedging between the ring and the body, as well as a zone for connection between the tip and the flange, whose shape is adapted to facilitate the movement of the tip, along its principal axis, with respect to the flange; wherein the member on which the lips abut being integral with the body, while the tip is extended by a flange for fixation on the body, an orifice for passage of the tip being made in the member on which the lips abut.



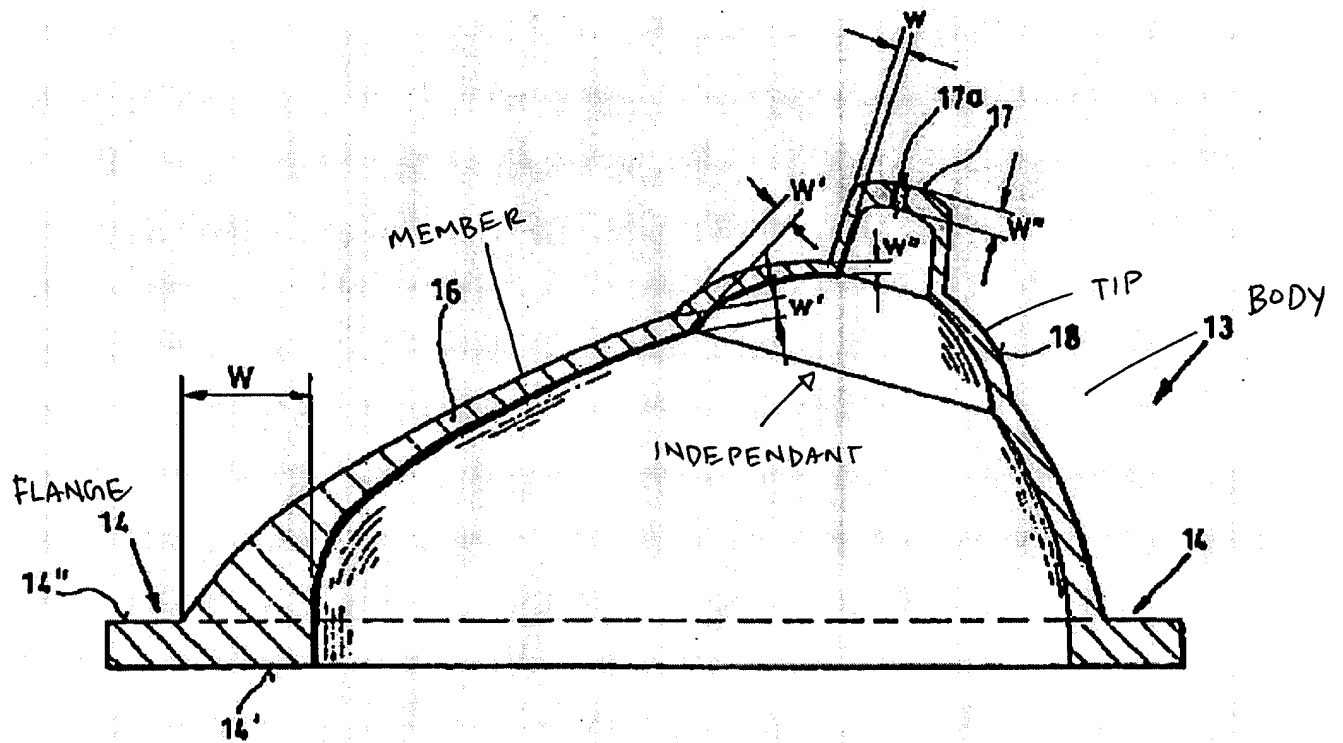


FIG-3d

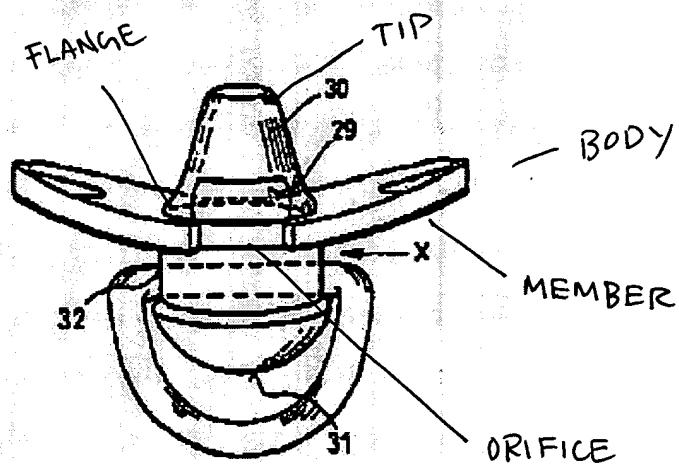


FIG-9

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7. Claim 4 is rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kerns et al.

8. Claim 4 is a product by process claim. The product itself does not depend on the process of making it. The claimed product appears to be the same or similar to that of the prior art. Kerns et al. teaches the article of claim 1, wherein the member on which the lips abut and the tip are integral.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kerns et al. in view of Wexler 5843128.

11. As to claim 3, Kerns et al. teach the article of claim 1. It should be noted that Kerns et al. fails to teach wherein the hardness of the tip is included between 20 and 50 Shore A.

12. Wexler teaches an article with a tip made from a material with a common hardness. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the tip of Kerns et al. with the hardness taught by Wexler to provide a tough and very pliable tip with a soft texture for use with infants (col. 2, lines 26-28). Furthermore, it is well known in the art of pacifiers/teats to

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provide a sucking/teething portion with the claimed hardness (evidenced by US20030181947 A and 4950286).

13. As to claim 2, Kerns/Wexler teaches the article of claim 1, wherein the hardness of the member on which the lips abut is higher than 50 Shore A. Kerns et al. teaches that the tip 18 is thinner in wall thickness compared to the wall thickness of the member on which the lips abut 16. Wexler teaches that the tip will have a hardness of less than 50 Shore A. Since the combination of Kerns/Wexler teaches that the tip has a hardness of less than 50 Shore A and that the wall of the tip is thinner than the wall of the member on which the lips abut, the thicker wall of the member on which the lips abut would result in a hardness greater than 50 Shore A.

Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-44963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MM


GLENN K. DAWSON
PRIMARY EXAMINER